

## REMARKS

After entry of this amendment, claims 1, 2, 5-16, 27, 29-39, 41, 43-46, 49-54, 58, 59, 64, 65, 67, 72, 73, and 75-87 will be pending for the Examiner's review and consideration. Claims 2, 11, 27, and 41 have been amended. No new matter has been added. Claims 3, 4, 40, and 42 have been canceled. Claims 17-26, 28, 47, 48, 55-57, 60-63, 66, 68-71, and 74 were previously canceled without prejudice. Reconsideration and allowance of the present application in view of the above amendments and the following remarks is respectfully requested.

This amendment responds to the office action mailed October 4, 2004. In the office action the Examiner:

- rejected claims 11, 15, 27, 29-36, 39-41, 43, 75, and 81-85 under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,379,363 to Herrington ("Herrington");
- rejected claims 2, 3, 5, 6, 8, 9, 27, 29-34, 36, 39-41, 43, 67, 73, 86, and 87 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,800,436 to Lerch ("Lerch");
- rejected claims 12, 13, 16, 37, 38, 44, and 76 under 35 U.S.C. § 103(a) as being unpatentable over Herrington;
- rejected claims 7, 10, 35, 37, 38, 44, 72, and 76 under 35 U.S.C. § 103(a) as being unpatentable over Lerch;
- objected to claims 4, 14, 42, and 77-80 as being dependent upon a rejected base claim, but otherwise allowable if rewritten in independent form; and
- allowed claims 1, 45, 46, 50-54, 58, 59, 64, and 65.

### Independent Claim 2

The Applicant would first like to thank the Examiner for the allowance of the subject matter disclosed in claim 4. Independent claim 2 has been amended to include substantially all of the limitations of allowable claim 4 including intervening claim 3. It should be noted, however, that independent claim 2 was not amended to recite "wherein the second clamping member has a disk shape," as it is respectfully submitted, that such limitation is not required to read over the cited prior art. Moreover, independent claim 2 has been amended so that only the second clamping member is concave in the first position and flattens out in the second position.

Thus, it is respectfully submitted that independent claim 2 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 2 is respectfully requested.

Claims 5-10, 67, 72, and 73 all ultimately depend from independent claim 2, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 5-10, 67, 72, and 73 is therefore respectfully requested.

### **Independent Claim 11**

Independent claim 11 was rejected under 35 U.S.C. § 102(e) as being anticipated by Herrington. Independent claim 11 recites, *inter alia*, a cranial flap clamp comprising a first clamping member having inner and outer surfaces, an extension member extending from the first clamping member, a second clamping member having inner and outer surfaces and an opening for slidably receiving the extension member, wherein at least one of the clamping members has a plurality of radial cutouts extending radially inwards from an outer circumference of the member so that movement of the clamping member from a first position to a second position causes the inner surface of the clamping member to flatten out allowing the clamping member to at least partially conform to the outer surface of the bone flap and skull. There is no disclosure, teaching, or suggestion in Herrington of a clamping member having a plurality of cutouts extending radially inwards from the outer circumference of the member so that movement of the clamping member from a first position to a second position causes the inner surface of the clamping member to flatten out allowing the clamping member to at least partially conform to the outer surface of the bone flap and skull.

Rather, Herrington discloses a disk 12 and a cap 14, wherein the disk 12 and cap 14 include a plurality of rectangular shaped bores 26 passing therethrough in order to reduce the overall mass of the clamp as well as to permit passage of fluid and bony ingrowth. The outer circumference of the cap 14 having a plurality of scalloped protrusions 52 for fixedly engaging the outer cranial flap and skull. It is respectfully submitted that there is absolutely no disclosure, teaching or suggestion that the scalloped protrusions 52 permit the cap to flatten out against the outer surface of the bone flap and skull. Rather, the scalloped protrusions 52 are designed to fixedly engage the cap 14 to the bone flap and skull.

Therefore, it is respectfully submitted that Herrington does not disclose, teach, and/or suggest all of the limitations of independent claim 11. Thus, it is respectfully submitted that

independent claim 11 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 11 is respectfully requested.

Claims 12-16 and 75-85 all ultimately depend from independent claim 11, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 12-16 and 75-85 is therefore respectfully requested.

#### Independent Claim 27

The Applicant would first like to thank the Examiner for the allowance of the subject matter disclosed in claim 42. Independent claim 27 has been amended to include all of the limitations of allowable claim 42 including intervening claim 40. Thus, it is respectfully submitted that independent claim 27 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 27 is respectfully requested.

Claims 29-39, 41, 43, 44, 86, and 87 all ultimately depend from independent claim 27, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 29-39, 41, 43, 44, 86, and 87 is therefore respectfully requested.

In light of the above amendments and remarks, it is respectfully submitted that claims 1, 2, 5-16, 27, 29-39, 41, 43-46, 49-54, 58, 59, 64, 65, 67, 72, 73, and 75-87 are now in condition for allowance, and the Examiner is respectfully requested to reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at 212-326-7883, if a telephone call could help resolve any remaining issues.

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Respectfully submitted,

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